CEQA News You Can Use

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Welcome to CEQA News You Can Use, a quarterly publication of **Brownstein Hyatt Farber Schreck, LLP's Natural Resources lawyers**. This publication is intended to provide quick, useful bites of CEQA news that we hope can be a resource for your real-time business decisions. That said, it is not and cannot be construed to be legal advice. Enjoy!

1. SANDAG's 2010 EIR greenhouse gas analysis did not need to analyze the project's consistency with the Schwarzenegger 2005 Executive Order's 2050 goals, but Supreme Court cautions that evolving science may require analysis in future.
In a widely anticipated decision, the California Supreme Court ruled that the San Diego Association of Governments (SANDAG) did not abuse its discretion by declining to analyze its Regional Transportation Plan's 2050 GHG emissions against the 2050 goal in Gov. Schwarzenegger's Executive Order S-3-05 (calling for an 80 percent reduction in emissions below 1990 levels). (***Cleveland National Forest Foundation v. SANDAG*** (Jul. 2017).) The court also found SANDAG did not violate CEQA when it did not use the Executive Order's 2050 goal as a significance threshold. The court cautioned, however, that the approach used in SANDAG's 2010 EIR may not be a template for future EIRs because there is more climate change information available to lead agencies now and SB 32 passed in 2016 sets a 2030 GHG goal of reducing emissions to 40 percent below 1990 levels. The narrow scope of the court's decision provides little helpful guidance regarding how to analyze GHG emissions in CEQA documents.

2. Why you need to be able to spell "ESHA" in the coastal zone.
ESHA—"environmentally sensitive habitat areas"—must be identified and protected under the Coastal Act. (Pub. Res. Code § 30240.) In ***Banning Ranch Conservancy v. City of Newport Beach*** (Mar. 2017), the California Supreme Court confirmed that an EIR must specifically identify the presence of ESHA for any project in the coastal zone, rather than defer for later analysis by the California Coastal Commission (CCC). A CEQA lead agency must "integrate the

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requirements of this division with planning and environmental review procedures otherwise required by law or by local practice so that all those procedures, to the maximum feasible extent, run concurrently, rather than consecutively." (Pub. Res. Code § 21003(a); *see also* CEQA Guidelines § 15124(d)(1)(C).) Additionally, an EIR, "must discuss potential ESHA and their ramifications for mitigation measures and alternatives when there is credible evidence that ESHA might be present on a project site." (CEQA Guidelines § 15126.6(f)(1).) This does not prevent a lead agency from disagreeing with the CCC over what does or does not constitute ESHA in an EIR, but it must discuss the issue.

3. Sea-level Rise? California Says You Better Plan for It.
Adopted in 2010 and updated in 2013, the state is again updating its **Sea-Level Rise Guidance Document**. This update may be the most important yet due to recent legislation and enhanced scientific understanding and projections of mass loss from continental ice sheets. In 2015, SB 379 amended Government Code section 65302 to require cities and counties to address climate adaptation and resiliency strategies when updating their general plans and to consider sources of information, such as the Sea-level Rise Guidance Document, when doing so. (See also **Executive Order B-30-15**.) And more recently, the California Ocean Protection Council and the California Ocean Science Trust issued their report, "**Rising Seas in California - An Update on Sea-Level Rise Science**," detailing post-2013 updates. The report states that sea level rise is expected to be one to 2.4 feet (San Francisco gauge location) by 2100 assuming successful GHG emissions mitigation efforts and, in the most drastic GHG scenarios, 10 feet or more by 2100. Look for the Guidance Document update in January 2018.

4. While we're talking about sea-level rise . . . a cautionary tale about being proactive with California Coastal Commission permits.
Encinitas homeowners applied to the CCC for a permit to rebuild a deteriorating sea wall protecting the coastal bluff below their homes. During the period the permit application was pending, strong winter storms destroyed the existing sea wall. While the CCC issued a permit to rebuild the sea wall, the permit issued only came with a 20-year term and if not renewed, would require the homeowners to remove the sea wall. The homeowners built the sea wall and then challenged the 20-year permit condition. In ***Lynch v. Cal. Coastal Commission*** (Jun. 2017), the California Supreme Court ruled that the homeowners had forfeited their right to challenge the permit by building the sea wall. What about the imminent threat to the bluff? The court held that the homeowners should have maintained the status quo by seeking an emergency permit from the CCC instead, while challenging the permit conditions in court.

5. CEQA Bills to Watch
In case you're wondering what CEQA bills are working their way through the legislature this summer, here are a few to watch . . . **SB 224** (Jackson) targets caselaw that counts illegal development as part of the environmental baseline by requiring the Governor's Office of Planning and Research to issue new CEQA Guidelines. **AB 890** (Medina) would overturn the

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California Supreme Court's 2014 *Tuolumne* decision by prohibiting the use of the initiative process for certain land use decisions by vesting exclusive authority in the City Council or Board of Supervisors to (1) adopt or amend a general plan, specific plan, zoning ordinance, or any other similar document; (2) convert any discretionary land use approval necessary for a project to ministerial approval; (3) change the land use or zoning designation of a parcel or parcels to a more intensive designation; (4) allow more intensive land uses within an existing land use designation or zoning designation; or (5) approve a development agreement. **AB 1420** (Aguiar-Curry) would allow small irrigation ponds that store less than 20 acre-feet of water annually to divert and store water during periods of high streamflow in exchange for reduced diversions during low streamflow conditions, and would categorically exempt such diversions from CEQA review. Finally, **SB 771** (De León) would establish a two-hour continuing education requirement for all public agency employees who oversee CEQA compliance, with local agencies to bear the costs of the education programs.

This document is intended to provide you with information regarding CEQA. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact one of the attorneys listed below or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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